IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7867 of 1993

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGANBHAI NARANABHAI

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

MR YN OZA for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/07/2004

ORAL JUDGEMENT

1. In this petition the petitioner has challenged the order dated 22.6.1993 which is at Annexure-A to the petition whereby the State Government had directed the petitioner to pay market rent for not vacating the government accommodation.

2. In the year 1964 the petitioner joined the services of the respondents at Ahmedabad Railway Police Station. In 1979 the petitioner was transferred to Vasad and he was allotted Government Quarter on 8th December 1983. Thereafter he was transferred to Miyagam on 31.5.1984. However, the petitioner did not vacate the quarter allotted to him and occupied the same without permission of the concerned authority. Therefore, the respondent authorities passed the order dated 22.6.1993 directing to recover market rent from the salary of the petitioner for the period from 1.8.1984 to 31.5.1993.

3.1 A bare perusal of the petition discloses that a vague petition is filed before this Court giving no details about the circumstances in which the impugned order came to be passed. It is also not mentioned as to under what circumstances the petitioner retained the quarter. Ordinarily if a head of the family is transferred, it is expected that the family members would join unless some extraordinary reason is there. No such reason is disclosed by the petitioner. The only inference that can be drawn is that the petitioner is interested in occupying the quarter and therefore he has not vacated the same.

3.2 Ms Shah for the petitioner relied upon Rule 223 of Gujarat Police Manual which pertains to normal housing arrangements. She submitted that it is mandatory on the part of the respondent to provide rent free accommodation to all police officers of and below the rank of Inspector. The petitioner was a Head Constable. Head Constable was defined under Rule 70 which is a class-III post Therefore, it is clear that the Government is not required to give rent free accommodation to a head Constable and only officers viz. Police Sub Inspector and the Inspectors are required to be given rent free accommodation. Therefore, Rule 223 is of no assistance to the petitioner.

3.3 Assuming that the petitioner is eligible for rent free accommodation, on transfer the government officer is required to vacate the rent free accommodation. Accordingly on his transfer the petitioner should have vacated the premises. Therefore, even that ground is not available to the petitioner.

4. The State Government issued a resolution dated 22.10.82 laying down criteria for occupying the quarter. In case of transfer, if an employee retains the government quarter without prior permission, then he has

to pay rent. It was noticed that in many cases employees continue to occupy the quarters unauthorisedly after their transfer, as a result of which the employees who were eligible to get the government quarter were deprived of the housing facility, causing lot of inconvenience and loss. They were required to hire residential accommodation at extraordinary cost. From cities if the employees are transferred and are retaining the quarters, the innocent eligible and the persons appointed/transferred to cities would suffer a lot. The Court has to keep this in mind. The innocent hopeful allottees are not before the Court and their interest is also required to be protected. When the decision is taken which is made applicable to all, there should be no interference. In a petition under Articles 226 and 227 of the Constitution of India, above aspects are required to be taken into consideration. For unauthorised occupation, rent fixed by the competent authority must be recovered. State should not suffer at the hands of the people who were asked to see that others are acting according to law and they cannot be permitted to breach the policy which is in the interest of all the employees.

5. The Division Bench of this Court in LPA No.608 of 1997 decided on 12.1.2000 considered the question of retention of the quarter beyond the period of two months in case of transfer of a police personnel who was held to be unauthorised occupant and considering the resolution of 1982, Court held that the retention of a quarter beyond the period of two months was unauthorised and occupant was required to pay rent. Thus, the petitioner continued to occupy the quarter without any authority and must be treated as unauthorised occupant of the quarter and therefore liable to pay rent in accordance with law.

6. In any case, once a government servant is transferred, he has to vacate the quarter as per the policy of the government, failing which he is required to pay the amount fixed by the government.

7. Learned counsel for the petitioner submitted that the amount is of Rs.33602/-. The petitioner has already retired. Therefore, after a period of 11 years, the petitioner may not be burdened with such amount. This contention cannot be accepted inasmuch as merely because the petitioner has retired from service would not absolve him from paying the amount due to the respondent. It is required to be noted that this Court has already decided the issue on 30th June 2000. Even thereafter the petitioner could have paid the amount which he has not done. Therefore, now this court cannot direct for waiver

of the amount in question. Moreover, the respondent shall also be entitled to recover interest at the rate of 9% from 22nd June 1993 till the amount is repaid. However, it is observed that if the petitioner makes a representation to the authority requesting for suitable installments for repayment, the concerned authority shall consider the same.

8. In the result, there are no merits in the petition and the same is required to be rejected. Accordingly the petition is rejected. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

[K.S. JHAVERI, J.]
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